

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 204 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
ASHOK KIRTIKAR SHAH

Versus

STATE OF GUJARAT

-----  
Appearance:

MR AD SHAH for Petitioners  
MR SR DIVETIA APP for Respondent No. 1  
MR SUNIL C PATEL for Respondent No. 2  
MR BHARAT T RAO for Respondent No. 3

-----  
CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/12/98

ORAL JUDGEMENT

Heard learned Advocate Mr.A.D.Shah for the petitioners, learned APP Mr.S.R.Divetia for respondent no.1-State, learned Advocate Mr.Sunil C. Patel for respondent no.2 and Mr.B.T. Rao, learned Addl.Central Govt. Standing Counsel for respondent no.3.

2. This application, preferred under Section 397 and/or Section 482 of the Code of Criminal Procedure, is directed against the order of the learned Addl. Chief Metropolitan Magistrate, Ahmedabad, made in Criminal Case No. 114 of 1989 over-ruling the objection raised on behalf of the accused, the petitioners herein.

3. The petitioners herein are the accused in the aforesaid Criminal Case No.114 of 1989. The accused are facing trial for commission of the offence punishable under Section 5 of the Import & Export (Control) Act, 1947 and Section 120-B read with Section 402 and Section 471 read with Section 467 of the Indian Penal Code. The trial has commenced. The prosecution has examined as many as 12 witnesses. The examination-in - chief of PW-13 one Ramesh Paragji Vashi has also commenced. The said witness, at the relevant time, was serving as a Deputy Superintendent of Police in the Economic Offences Wing of Central Bureau of Investigation and had investigated the offence in question. In course of his examination-in-chief, several questions were put to him in respect of the investigation carried out by him. The said witness has stated, inter alia, that, in course of investigation, he had learnt that the material imported by the accused were disposed of in the open market, which he came to know from the statements of various witnesses. He had further stated that five shipping bills were missing. He had made the investigation in respect of whether the goods were exported by the accused or not for which he had recorded the statements of several witnesses. At this juncture, the defence Advocate apprehending that further questions would be put to the said witness in respect of the contents of the statements recorded by him, objected to any such question being put to the witness. The objection raised by the learned Advocate was objected to by the learned Public Prosecutor and had submitted that the Investigating Officer cannot be prevented from disclosing the result of his investigation. The submission made by the learned Public Prosecutor was upheld by the learned Magistrate and the objection raised by the defence Advocate was over-ruled. Feeling aggrieved, the accused have preferred this application.

4. Mr.Shah has submitted that the disclosure of the contents of the statements recorded by the Investigating Officer would be hearsay evidence and would not be admissible in evidence. No such statement, therefore, can be permitted to be made by the Investigating Officer. Any such statement would be contrary to Section 162 of

the Code of Criminal Procedure and Section 60 of the Evidence Act, 1972. In support of his contention, he has relied upon a decision of this Court in the matter of Rayma Jusab Alimamad v. The State of Gujarat [1965 GLR 776] and the judgments of the Supreme Court in the matters of Shri Kaptan Singh & ors. v. State of M.P. & anr. [JT 1997 (5) SC 35] and of Vijender etc. v. The State of Delhi [JT 1997 (3) SC 131]. In the matter of Rayma Jusab Alimamad (supra), this Court has held that, "What a person finds as a result of investigation is absolutely shut out by Sec.60 of the Evidence Act as hearsay. All references to the report of the Circle Inspector and the result of his investigation are, therefore, absolutely irrelevant. It is the duty of the Court to disallow the evidence of such a type, even if it is not objected to by either side..... Judges should stop witnesses from giving hearsay evidence." In the matter of Vijender etc. (supra), in paragraph 11 of the judgment, the Court has held that the oral evidence must, in all cases whatever, be direct, that is to say, if it refers to a fact which could be seen it must be the evidence of a witness who says he saw it. Further in paragraph 25 of the judgment, the Court has held that, "the reliance of the trial Judge on the result of investigation to base his findings is again patently wrong..... The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under Section 190(1)(b) Cr.P.C. and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial Court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof." Similarly, in the matter of Shri Kaptan Singh & ors. (supra), the Court observed that, "it is trite that the result of investigation can never be legal evidence."

5. In view of the judgments referred to herein above, the matter need not be deliberated further. The objection raised by the defence Advocate against the witness deposing in respect of the result of his investigation was, therefore, valid. The witness could not have been asked questions regarding the contents of the statements recorded by him in course of the investigation. The learned trial Judge was not right in over-ruling the objection raised by the defence Advocate. The application is, therefore, allowed. The objection

raised by the defence Advocate is sustained. The witness may not be asked any question in respect of the contents of the statements recorded by him in course of investigation which, in view of the provisions contained in Section 162 of the Code of Criminal Procedure and Section 60 of the Evidence Act, is not admissible in evidence.

6. Rule is made absolute accordingly. There shall be no order as to costs. R&P be returned to the trial Court immediately.

\*\*\*\*\*

sreeram.